No. 950
LIBRARY
SUPREME COURT, U. S.
FILED
APR 23 1958
FRY, Clerk

In the

United States Court of Appeals

For the Seventh Circuit

No. 12108

RICHARD KOSLEY,
Plaintiff-Appellee,

vs.

GOLDBLATT BROS., INC., a corporation,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

Honorable Luther M. Swygert, Presiding Judge.

BRIEF AND APPENDIX FOR APPELLEE.

J. Walter Nowicki,
Edward J. Raskosky,
George Kohl,
5129 Hohman Avenue,
Hammond, Indiana,
Attorneys for Appellee.

Midwest Law Printing Co., 326 N. Michigan Ave., Chicago
Telephone: Financial 6-2988

INDEX.

PAGE

Statement of Facts 1

Summary of Argument 4

The Contested Issues 5

Propositions of Law Relied Upon 6

Argument:

I. Section 301 of the Labor Management Relation Act of 1947 and Section 3 of the United States Arbitration Act have no application to the present case. 9

II. Principles of Contract Law as applied in the State of Indiana require an affirmance of the District Court's Decision. 11

Authorities Cited.

Cases

American Locomotive Company v. Chemical Research Corp. (CCA Mich.) 171 Fed. 2d 115, (1948) 14

Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U.S. 437, (1955) 9, 11, 14

Bernhardt v. Polygraphic Company of America, Inc., 350 U. S. 198, (1956) 10, 13, 16

Forqueron v. Van Meter, 9 Ind. 270, (1857) 14

Grand Rapids and Indiana Railway Company v. Jaqua, 66 Ind. App. 113, 115 N.E. 73 (1917) 17

Heritage v. State, ex rel Crim Auditor et al., 43 Ind. App. 595, p. 600, 88 N.E. 114 (1909) 17

In re Feuer Transp. Inc., 295 N.Y. 87, 65 N.E. 2d 178, (1946) 13

Lake Michigan Water Company v. U. S. Fidelity Company, 70 Ind. App. 537, 123 N.E. 703 (1919) 12

La Nacional Platanera SCL v. North American Fruit and Steamship Corp., (CCA Ala.) 84 Fed. 2d 881, (1956) 14

Maitland v. Reed, 37 Ind. App. 469, 77 N.E. 290 (1905) 12

Radiator Specialty Co. v. Cannon Mills Inc., (CCA N.C.) 97 Fed. 2d 318, 319 (1938) 14

Textile Workers Union v. Lincoln Mills of Alabama, 77 S. Ct. 912, (1957) 10

United States v. Fred W. Voges, Voges Manufacturing Company, Inc. and Radar Holding Corporation et al, 124 F. Supp. 543 (1954) 15

STATUTES

Section 301, Labor Management Relation Act of 1947, 29 U.S.C. 185 ..... 9, 11

United States Arbitration Act, 9 U.S.C. Sec. 3 (Supp. Vol. 1952) 9, 10, 11

Burns Indiana Statutes Annotated (1952 Replacement Volume) Sec. 40-101 15

Burns Indiana Statutes Annotated (1952 Replacement Volume) Sec. 40-102 15

Burns Indiana Statutes Annotated (1946 Replacement Volume) Sec. 3-222 13

TEXTBOOKS

6 C.J.S. Arbitration and Award, Sec. 34 (e) p. 178 17

6 C.J.S. Arbitration and Award, Sec. 4, p. 155 13

In the

United States Court of Appeals

For the Seventh Circuit

No. 12108

RICHARD KOSLEY, Plaintiff-Appellee, vs. **GOLDBLATT BROS., INC., a corporation,** Defendant-Appellant.	Appeal from the United States District Court for the Northern District of Indiana, Hammond Division. Honorable Luther M. Swygert, Presiding Judge.

APPELLEE'S BRIEF.

STATEMENT OF FACTS.

The plaintiff's complaint against defendant is based upon diversity of citizenship and the required jurisdictional amount. (Appellee's Appendix p. 1a) The undisputed facts in the case at bar were that plaintiff's com-

plaint herein covered wages due him from defendant covering the period of July 1, 1947 to October 29, 1955. (Appendix 12) On October 9, 1956, defendant filed answer on the merits to plaintiff's complaint. (Appellee's Appendix p. 4a)

Plaintiff notified the business representative of the union, Mr. Stevens, in 1945, and on several occasions after that of his wage demand, and was told to just keep going until it was straightened out. (Appendix 13) Plaintiff notified Mr. Dall, the defendant's superintendent, in approximately 1949 or 1950, and no action was taken by Mr. Dall on his wage claim. (Appendix 14)

Without notice to the court or plaintiff, either by the defendant or the union, (Appendix 15) the defendant, on May 10, 1957, appointed Mr. Stanford Clinton, the defendant's attorney of record in this case, one of the arbitrators, and the union selected Frank Rebey. (Appendix 6, 7) Plaintiff was given no opportunity or consulted in the appointment of these arbitrators. (Appendix 14, 15) The plaintiff, through his attorney, first acquired notice that this matter was to be submitted to arbitration on approximately May 21, 1957, after the arbitrators and umpire had been selected, notifying plaintiff that on May 27, 1957, a hearing would be had before the arbitrators. (Appendix 5, 6)

The International Union of Operating Engineers Local 846 did not consult plaintiff, relative to the selection of the arbitrators. (Appendix 15) Mr. Brookman, the president and business manager of the local union, testified that he was not familiar with the dispute between plaintiff and defendant. (Appendix 19 and 20)

The union contract covers both the Hammond and Gary Stores, and covers four employees. (Appendix 24) Mr. Brookman did not notify Mr. Kosley when he learned of the proposed arbitration because Mr. Kosley is out of the union on a withdrawal card and the contract is between the union and Goldblatt, and he thinks that the union should protect itself. (Appendix 25) The union did not start the arbitration. (Appendix 28)

SUMMARY OF ARGUMENT.

I.

Section 301 of the Labor Management Relation Act of 1947, 29 U.S.C. Section 185, is not applicable to the case at bar due to the fact that plaintiff's suit is for unpaid wages and is based upon diversity of citizenship. There is nothing in the record to indicate that an "industry affecting commerce" is involved as required by said Section.

Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3 (Supp. Vol. 1952) has no application to the present case due to the fact that Sections 1 and 2 of said Act specifically include only "maritime transactions" and contracts evidencing a transaction involving commerce, and specifically exclude contracts of employment.

II.

Defendant waived its right to arbitration by failing to take action on plaintiff's claim and filing answers on the merits of plaintiff's complaint. The arbitration clause in the present case did not contemplate the arbitration of a suit for unpaid wages and the Indiana Statutes have expressed a public policy that individual workmen have the right to sue for unpaid wages and damages in the courts and any contract to the contrary shall be void.

The federal courts in a diversity case must look to the state law to determine whether an arbitration provision would be enforceable and under Indiana law, common law arbitration agreements are revocable at any time before the award is made.

THE CONTESTED ISSUES.

I.

Does Section 301 of the Labor Management Relation Act of 1947, 29 U.S.C. Section 185, and Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3 apply in a diversity suit between an employee and employer for unpaid wages where there is no evidence of an industry affecting commerce being involved?

II.

Did the Federal District Court in the instant case which was based upon diversity of citizenship, properly sit as another state court of the State of Indiana and properly apply the Indiana law which states that arbitration agreements are revocable?

PROPOSITIONS OF LAW RELIED UPON.

I.

Section 301 of the Labor Management Relation Act of 1947 and Section 1 of the United States Arbitration Act have no application to the present case.

A suit for unpaid wages by a union on behalf of certain employees is not the proper subject matter of a suit brought under Section 301 of the Labor Management Relation Act of 1947, 29 U.S.C. 185.

> *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, (1955).

The stay provision of Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3 applies only to those contracts covered by Sections 1 and 2.

> *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 201, 203, (1956).

II.

Principles of contract law as applied in the State of Indiana require the affirmance of the District Court's decision.

A reference to arbitration is not a condition precedent to an action at law.

> *Maitland* v. *Reed*, 37 Ind. App. 469, 470, 471, 77 N.E. 290 (1905).

The federal courts in a diversity case must look to the state law to determine whether an arbitration provision would be enforceable.

> *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 201, 203, (1956).

Arbitrations are of two kinds, common law and statutory.

> 6 C.J.S., Arbitration and Award, Sect. 4, p. 155.

An arbitration which is not in accordance with the statute, is a common law arbitration.

> *Forqueron* v. *Van Meter*, 9 Ind. 270, 272 (1857).

A party may waive its right to enforce an arbitration clause through inaction and filing answers on the merits to a pending litigation.

> *La Nacional Platanera SCL* v. *North American Fruit and Steamship Corp.*, (CCA Ala.) 84 Fed. 2d 881, 883 (1936).
>
> *American Locomotive Company* v. *Chemical Research Corp.*, (CCA Mich.) 171 Fed. 2d 115, 121 (1948).
>
> *Radiator Specialty Co.* v. *Cannon Mills Inc.*, (CCA N.C.) 97 Fed. 2d 318, 319 (1938).

The employees have always been able to enforce their individual rights in the state courts.

Association of Westinghouse Salaried Employees v. *Westinghouse Electric Corp.*, 348 U.S. 437, 460 (1955).

Burns Indiana Statutes Annotated (1952 Replacement Volume), Sections 40-101 and 40-102.

A federal court enforcing a state created right in a diversity case is only another court of the State.

Bernhardt v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 203 (1956).

A common law submission may be revoked at any time before the award is made, even though the agreement provides that the submission cannot be revoked.

Heritage v. *State, ex rel Crim Auditor et al.*, 43 Ind. App. 595 p. 600, 88 N.E. 114 (1909).

Grand Rapids and Indiana Railway Company v. *Jaqua*, 66 Ind. App. 113, 115 N.E. 73 (1917).

ARGUMENT.

I.

Section 301 of the Labor Management Relation Act of 1947 and Section 3 of the United States Arbitration Act have no application to the present case.

Defendant's argument at page 8 of its brief asserting that Section 301 of the Labor Management Relation Act of 1947, 29 U.S.C. Section 185 is applicable, is based first of all on the false assumption that plaintiff had sued under Section 301. The complaint of plaintiff for unpaid wages in the present case was based upon the diversity of citizenship and the statutory amount of damages. (Appellee's Appendix p. 1a) There is nothing in the record to indicate that an "industry affecting commerce" is involved as required by Section 301. Also Section 301 applies only to suits "between an employer and a *labor organization.*"

This disposes of the plaintiff's argument as to Section 301, but it might be further pointed out that in the case of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, (1955) that the Supreme Court held that a suit for unpaid wages by a union on behalf of certain employees was not a proper subject matter of a suit that could be brought under Section 301.

The defendant's contention at the bottom of page 9 and pages 10 and 11, (Appellee's Brief) that Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3 (Supp. Vol. 1952) applies to the present case, even if it is based on the diversity of citizenship, is untenable.

The Supreme Court subsequently to the cases cited by defendant at pages 10 and 11 of its brief has spoken regarding the interpretation of Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3.

"Since Section 3 is a part of the regulatory scheme, we can only assume that the "agreement in writing" for arbitration referred to in Section 3 is the kind of agreement which Sections 1 and 2 have brought under federal regulation. There is no intimation or suggestion in the Committee Reports that Sections 1 and 2 cover a narrower field than Section 3." • • • "We conclude that the stay provided in Section 3 reaches only those contracts covered by Sections 1 and 2." *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 201, 202, (1956).

It is also to be noted that Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3 (Supp. V. 1952) provides for a stay, "providing the applicant for the stay is not in default in proceeding with such arbitration." As pointed out in other sections of this brief herein, the defendant is in default in the proceeding for such arbitration by virtue of its filing answer on the merits of the case without raising any question of arbitration, and further by virtue of its inaction for a period of several years after notice of plaintiff's claim and for a period of several months after filing answer before a request was made for arbitration. The court is also directed to plaintiff's argument in Part II of the argument that the arbitration clause in the contract under discussion is inapplicable to a suit by an individual employee for past due wages and said arbitration agreement, even if applicable, was revoked by plaintiff.

As to other cases cited by defendant in Part I of its brief, plaintiff says that in the *Textile Workers Union* v. *Lincoln Mills of Alabama*, 77 S. Ct. 912, (1957) the court

merely held that it would grant specific performance of promises to arbitrate in a collective bargaining agreement when the action was brought under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C., Section 185.

Regarding Section 301 the Labor Management Relations Act the Supreme Court in the case of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, (1955) at page 461 stated: "Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one."

Therefore, since the present case was a suit for unpaid wages based upon diversity of citizenship, Section 301 of the Labor Management Relations Act of 1947 29 U.S.C. Section 185 and Section 3 of the United States Arbitration Act, 9 U.S.C. Section 3 (Supp. V. 1952) are not applicable to the case at bar.

II.

Principles of contract law as applied in the State of Indiana require an affirmance of the District Court's decision.

The defendant under part II of its brief asserts that the arbitration clause in the present case constituted a condition precedent prior to suit and in effect says that the arbitration clause is irrevocable, even though defendant admits the Indiana law to be that the common law arbitration may be revoked at any time prior to rendering of an award.

The cases of *Lake Michigan Water Company* v. *U. S. Fidelity Company* 70 Ind. App. 537, 542, 123 N.E. 703 (1919) and *Maitland* v. *Reed* 37 Ind. App. 469, 77 N.E. 290 (1905) cited by defendant at page 16 of its brief has no application in the present case, as they did not involve the revocation of an arbitration agreement.

In fact the case of *Maitland* v. *Reed* 37 Ind. App. 469, 470, 471, 77 N.E. 290 (1905) rejects the contention that in Indiana an arbitration agreement is a condition precedent to suit at law when the court stated at pages 470, 471:

> "Appellants filed a plea in abatement to Reed's cross-complaint, alleging the necessity, by the terms of the contract, of a reference to arbitration as a prerequisite to an action by Reed. The *demurrer to this answer was properly sustained.*" * * * "It is not competent for parties to a contract, in advance of any dispute, to oust the jurisdiction of the courts by providing that the decision of a party therein named upon a dispute which might thereafter arise shall be final and conclusive." (Our emphasis)

In the case of *Lake Michigan Water Company* v. *U. S. Fidelity Company* 70 Ind. App. 537, 123 N.E. 703 (1919) the court seems to say that an architect case is on a different basis than an ordinary arbitration agreement. However, in that case it is to be noted that payment had been made on the approval of the appellant's architect and suit filed some five years after the architect had approved the work and therefore the parties had in effect already submitted the matter to arbitration and payment had been made on the basis of the architect's "arbitration".

The New York cases cited by defendant has no application because the law of the State of New York differs from the law of the State of Indiana. In the case of *In re*

Feuer Transp. Inc. 295 N. Y. 87, 65 N.E. 2d 178, 180 (1946) the New York court stated:

> "Prior to this enactment, an arbitration agreement was easily violated. Before award, or in any event before final submission of a dispute under arbitration the agreement to arbitrate was revocable" • • • "Under the new statute arbitration became both orderly and enforceable and was made subject in effect to a decree for specific performance."

Therefore, the New York and other foreign decisions cited by the defendant would have no effect on the law of Indiana where the common law on arbitration agreements is still in force, i.e., Common law arbitration agreements are revocable.

The Federal District Court in the case at bar correctly enjoined defendant from proceeding with the proposed unlawful arbitration.

The federal courts in a diversity case must look to state law to determine whether an arbitration provision would be enforceable. *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 205 (1956).

"Arbitrations are of two kinds, common law and statutory," 6 C.J.S. Arbitration and Award, Section 4, page 155. The arbitration clause in the present case was not a statutory arbitration by virtue of non-compliance with the Indiana Statute, Burns Indiana Statute Annotated (1946 Replacement Volume) Sec. 3-[illegible] which provides: "If the subject-matter of any suit pending in any court might originally have been submitted to arbitration, the parties to such suit, their agent or attorney-at-law, may consent, by rule of court, to refer the matter in controversy to certain persons mutually chosen by them in open court."

Since the arbitration was not in accordance with the Statute, the present case involved a common law arbitration. *Forqueron* v. *Van Meter* 9 Ind. 270, 272 (1857).

First of all, plaintiff asserts that the defendant waived its right to enforce the arbitration clause, when the defendant and the union stood by for over seven years after notice of plaintiff's claim; (Appendix 13, 14) and defendant filed answer to plaintiff's complaint and failed to take any action whatsoever on the arbitration until some seven months after answer was filed, arbitration was waived. *La Nacional Platanera SCL* v. *North American Fruit and Steamship Corp.* (CCA Ala.) 84 Fed. 2d 881, 883 (1936); *American Locomotive Company* v. *Chemical Research Corp.* CCA Mich. 171 Fed. 2d 115, 121 (1948); *Radiator Specialty Co.* v. *Cannon Mills Inc.*, (CCA N C.) 97 Fed. 2d 318, 319 (1938).

Secondly, the arbitration clause in the present case provided, "It is agreed that there shall be no strikes, lockouts, stoppages, or the use of any economic coercion during the term of this agreement." Certainly it is apparent that where the above phrase appears in the first sentence of the arbitration clause, that the matters contemplated by the party to be subject to arbitration are "union matters" involving strikes, lockouts, stoppages, or the use of economic coercion during the term of this agreement, or as characterized by the union president, it is the "no strike clause". (Appendix 21) and would not cover a claim by an individual employee for past due wages.

"The employees have always been able to enforce their individual rights in state courts." *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.* 348 U.S. 437, 460 (1955).

Therefore, a claim by an individual employee for back wages is an individual right which the employee has the right to sue in his own behalf in the state courts, or in the federal courts where there is the required amount and diversity of citizenship.

The collective bargaining agreement merely sets forth the general terms and conditions as to an employee's contract of hire, but where there is a breach in the terms and conditions which merely involve an individual right, such as the non-payment of wages, then the individual has the right to seek his remedies in the courts, such as was done in the case at bar.

Burns Indiana Statutes Annotated (1952 Replacement Volume) Sec. 40-101 provides "Every person, firm, corporation • • • doing business in this state shall pay each employee thereof at least twice each month, if requested, • • • the amount due such employee and such amount shall be payable in the lawful money of the United States • • • and *any contract to the contrary shall be void.*" (Our emphasis)

Burns Indiana Statutes Annotated (1952 Replacement Volume) Sec. 40-102 further provides for liquidated damages and attorney fees in the event that such payment is not made and states: "*and said damages may be recovered in any court* having jurisdiction of a suit to recover the amount due to such employee • • •" (Our emphasis)

In the case of *United States* v. *Fred W. Voges, Voges Manufacturing Company, Inc. and Radar Holding Corporation, et al*, 124 F. Supp. 543 (1954) it was held that in a suit between employee and employer's receiver, the em-

ployee has no right to compel arbitration under the collective bargaining agreement between the union and the employer.

Certainly the two cited statutes recognize the policy within the State of Indiana of giving to every employee a distinct right to collect his own wages in the courts, regardless what the collective bargaining agreement might provide.

Thirdly, the arbitration agreement was revocable under state law.

"* * * the federal court enforcing a state-created right in a diversity case is, * * * only another court of the State." *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 203 (1956). The facts in that case were that it was a suit based upon diversity of citizenship for damages for the discharge of plaintiff under an employment contract. The contract contained a provision that in case of any dispute the parties would submit the matter to arbitration, whose determination shall be final and absolute. After the case had been removed to the district court, the defendant moved for a stay of proceeding so that the controversy could go to arbitration. The court held that the stay was properly denied. At page 203 the court stated: "If the federal court allows arbitration where the state court would disallow it, the outcome of litigation might depend on the courthouse where suit is brought. For the remedy by arbitration, whatever its merits or shortcomings, substantially affects the cause of action created by the State. The nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action. The change from a court of law to an arbitration panel may make a radical difference

in the ultimate result. Arbitration carries no right to trial by jury that is guaranteed both by the Seventh Amendment and by Ch. 1, Art. 12th, of the Vermont Constitution. Arbitrators do not have the benefit of judicial instruction on the law; they need not give their reasons for their results; the record of their proceedings is not as complete as it is in a court trial; and judicial review of an award is more limited than judicial review of a trial." The court further stated at page 204: "There would in our judgment be a resultant discrimination if the parties suing on a Vermont cause of action in the federal court were remitted to arbitration, while those suing in the Vermont court could not be."

"Generally the institution of a suit covering the same subject matter as that submitted to arbitration revokes the submission." 6 C.J.S. Arbitration and Award, Sec. 34 (e) p. 178 and cases cited therein.

"A common-law submission may be revoked at any time before the award is made, even though the agreement provides that the submission cannot be revoked." *Heritage* v. *State, ex rel Crim Auditor et al* 43 Ind. App. 595 P. 600, 88 N.E. 114 (1909), *Grand Rapids and Indiana Railway Company* v. *Jaqua*, 66 Ind. App. 113, 115 N.E. 73 (1917).

Therefore, in the case at bar immediately upon filing the plaintiff's complaint herein, the arbitration agreement, if we assume it covered the subject matter in dispute, was revoked by plaintiff. Further plaintiff expressly revoked any arbitration agreements at the hearing on his petition for restraining order. (Appendix 14)

Therefore the court below properly enjoined the defendant from proceeding with the arbitration proceedings under the court's ancillary jurisdiction.

Respectfully submitted,

J. WALTER NOWICKI,
EDWARD J. RASKOSKY,
GEORGE KOHL,
Attorneys for Appellant.

J. WALTER NOWICKI,
EDWARD J. RASKOSKY,
GEORGE KOHL,
5129 Hohman Avenue,
Hammond, Indiana.

INDEX TO APPENDIX.

	PAGE
Statement Pursuant to Rule 16(b)	1a
Complaint	1a
Answer	4a

APPELLEE'S APPENDIX.

UNITED STATES DISTRICT COURT,
Northern District of Indiana,
Hammond Division.

Richard Kosley

v.

Goldblatt Bros., Inc., a corporation
Hammond Civil 2075.

STATEMENT PURSUANT TO RULE 16 (b)

Complaint in the above case was filed September 15, 1956. Defendant filed answer on October 9, 1956.

Kenneth Lackey,
Clerk
By *Jean Erickson*,
Deputy.

IN THE UNITED STATES DISTRICT COURT
• • (Caption-2075) • •

COMPLAINT

The plaintiff, Richard Kosley, by his attorneys, Nowicki, Raskosky & Kohl, complains of the defendant, Goldblatt Bros., Inc., a corporation, and for cause of action alleges and says as follows:

1. That the plaintiff, Richard Kosley, is a citizen of the State of Indiana and resides in the City of Hammond, Indiana.

2. That the defendant, Goldblatt Bros., Inc., is a corporation incorporated under the laws of the State of Illinois and authorized to do business in the State of Indiana.

3. That the amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3000.00).

4. That the defendant, Goldblatt Bros., Inc., is and for many years prior hereto has been engaged in the retail department store business in the City of Hammond, Lake County, Indiana.

5. That for the period from July 1, 1947 to October 29, 1955, plaintiff was employed by the defendant as an operating engineer in defendant's Hammond, Indiana store.

6. That during said period of time, the defendant agreed to pay plaintiff the hourly rates for wages as shown by Exhibit "A" attached hereto and made a part of this complaint by reference, and further agreed to pay plaintiff at one and one-half times said rates for all hours worked in excess of forty hours per week, and that plaintiff worked fifty-six hours each week during said period.

7. During said period the defendant paid plaintiff for only forty-eight hours of work per week and thereby the defendant is indebted to plaintiff in the sum of Eleven Thousand Seven Hundred Seventy-one and 40/100 Dollars ($11,771.40) as shown by the attached Exhibit "A".

8. That on August 21, 1956, plaintiff demanded of defendant that it pay him said wages, but the defendant refused to do so and still refuses to pay him said wages, and the said wages are now due and wholly unpaid.

9. That by virtue of the Indiana Acts, 1933, Chapter 47, Section 2, page 371, Burns Indiana Statutes Annotated, 1952 Replacement Section 40-102 regulating the payment of wages, a penalty of Twenty-three Thousand Five Hundred Forty-two and 80/100 Dollars ($23,542.80) has accrued against the defendant.

10. That it has been necessary for the plaintiff to employ an attorney to collect said wages and a reasonable fee for said attorney is Five Hundred Dollars ($500.00).

Wherefore, plaintiff prays judgment for Thirty-five Thousand Three Hundred Fourteen and 20/100 Dollars ($35,314.20) plus Five Hundred Dollars ($500.00) attorney fees, and for all other proper relief in the premises.

• • • • •

EXHIBIT "A"

Period Worked	No. of Weeks	Regular Rate per	Hours worked and not paid for	Wages due at time and one-half
July 1, 1955 to Oct. 29, 1955	17	2.69	136	548.76
July 1, 1954 to July 1, 1955	52	2.60	416	1622.40
July 1, 1953 to July 1, 1954	52	2.55	416	1591.20
July 1, 1952 to July 1, 1953	52	2.40	416	1497.60
July 1, 1951 to July 1, 1952	52	2.31	416	1441.44
July 1, 1950 to July 1, 1951	52	2.17½	416	1357.20
July 1, 1949 to July 1, 1950	52	2.10	416	1310.40
July 1, 1948 to July 1, 1949	52	2.00	416	1248.00
July 1, 1947 to July 1, 1948	52	1.85	416	1154.40

IN THE UNITED STATES DISTRICT COURT

* * (Caption-2075) * *

ANSWER OF DEFENDANT

PARAGRAPH ONE

For answer to the complaint filed herein the defendant, Goldblatt Bros., Inc., says:

1) That it admits the allegations alleged in rhetorical paragraph 1 of said complaint.

2) That it admits the allegations alleged in rhetorical paragraph 2 of said complaint.

3) That it admits the allegations alleged in rhetorical paragraph 3 of said complaint.

4) That it admits the allegations alleged in rhetorical paragraph 4 of said complaint.

5) That it denies the allegations alleged in rhetorical paragraph 5 of said complaint.

6) That it denies the allegations alleged in rhetorical paragraph 6 of said complaint.

7) That it denies the allegations alleged in rhetorical paragraph 7 of said complaint.

8) That it denies the allegations alleged in rhetorical paragraph 8 of said complaint.

9) That it denies the allegations alleged in rhetorical paragraph 9 of said complaint.

10) That it denies the allegations alleged in rhetorical paragraph 10 of said complaint.

PARAGRAPH TWO

For further and second paragraph of answer to the complaint filed herein this defendant says:

1) That the complaint filed herein does not state a claim, nor does it state sufficient facts against this defendant upon which relief can be granted.

PARAGRAPH THREE

For further and third paragraph of answer to the complaint filed herein this defendant says:

1) That any and all claims or accounts due and owing from this defendant to plaintiff herein were fully paid long prior to the filing of this cause of action.

PARAGRAPH FOUR

For further and fourth paragraph of answer to the complaint filed herein this defendant says:

1) That if plaintiff herein did perform services for the defendant in excess of forty-eight hours per week, he did so without any request from this defendant and without being required to do so by this defendant and did so voluntarily and against the direction of the management of the store by which plaintiff was employed; that no employee of this defendant is required to work in excess of forty-eight hours per week without specific request.

PARAGRAPH FIVE

For further and fifth paragraph of answer to the complaint filed herein this defendant says:

1) That the cause of action sued upon herein has been and is barred by the statute of limitations.

Wherefore defendant prays judgment.

• • •

(Supplemental Transcript)